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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA RESTAURANT ASSOCIATION,

Plaintiff,

vs.

THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH,

Defendants.

Case No. C08-3247 CW

DECLARATION OF MARGO G. WOOTAN, D.SC., IN OPPOSITION TO PLAINTIFF'S MOTION FOR DECLARATORY RELIEF AND A PRELIMINARY INJUNCTION

Hearing Date: September 4, 2008
Time: 2:00 p.m.
Place: Ctrm 2, 4th Floor

I, Margo G. Wootan, D.Sc. hereby declare as follows:

1. I am the director of Nutrition Policy at the Center for Science in the Public Interest ("CSPI"), one of the country's leading health advocacy organizations that specializes in nutrition and food safety. I have worked at CSPI for more than fifteen years. I hold a Bachelors of Science in nutrition from Cornell University and a doctorate in nutrition from Harvard School of Public Health. I co-founded and coordinate the activities of the National Alliance for Nutrition and Activity, the largest nutrition and physical activity coalition in the country, and am a member of the Steering Committee of the National Fruit and Vegetable Alliance, a public-private partnership that leads the nation's efforts to promote fruit and vegetable intake. In addition, I was a supporting participant in the Keystone Forum on Away-from-Home Foods, which was funded and convened by the U.S. Food and Drug Administration. The purpose of the Keystone Forum was to consider what can be done to support consumers' ability to manage calorie intake and prevent weight gain and obesity from eating out.

2. Americans' diets are contributing to health problems ranging from obesity to cancer. Nutrition labeling on food packages helps millions of people, but when people eat out, restaurants rarely provide nutrition information at the point where people are ordering. Yet studies show that in the absence of nutrition information it is difficult for people to estimate the calorie content of restaurant meals. Without menu labeling, how are people to know that a tuna sandwich at a typical deli has 50% more calories than a roast beef sandwich? Or that a grilled chicken sandwich at McDonald's has as many calories as a Quarter Pounder?

3. Because restaurants have not acted on their own to provide nutritional information in a manner likely to be used by customers, governments must step in to enable consumers to make informed choices. San Francisco's menu labeling requirement is an important step toward addressing obesity and supporting informed food choices and healthy eating.

Obesity is one of the most pressing health problems in the United States

4. Over the last 25 years, obesity rates doubled among U.S. adults and tripled in children and teens.[1] Overweight and obesity affect the majority of American adults (66%).

5. Obesity is a serious public health threat and a leading cause of death. A 2005 study by the Centers for Disease Control and Prevention ("CDC") estimated that approximately 112,000 deaths are associated with obesity each year in the United States.[2] That makes obesity the second leading contributor to premature death (the first is tobacco). It is equivalent to a jetliner full of 300 people crashing every day.

6. Diabetes rates have risen along with obesity rates. The number of Americans with diabetes more than doubled (from 5.8 million to 14.7 million) between 1980 and 2004.[3] More than 60% of people with diabetes are under 65 years old. Between 50% and 80% of diabetes cases are associated with obesity, unhealthy eating patterns, and sedentary lifestyles.[4] Obesity also increases the risk of heart disease, high blood pressure, arthritis-related disability, and cancer.[5]

Calories are the nutrition information relevant to obesity

7. The California Restaurant Association ("CRA") argues that San Francisco's menu labeling law overemphasizes a limited number of nutrients, which could interfere with a healthy, balanced diet. Pl. Mem. at 2. While calories are not the only nutrition information important to health, they are the nutrition information relevant to obesity. The Dietary Guidelines for Americans, the basis of national nutrition advice, programs, and policy, concluded "to maintain body weight in a

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[1] Ogden C, et al. "Prevalence of Overweight and Obesity in the United States, 1999-2004." *Journal of the American Medical Association* 2006, vol. 295, pp. 1549-1555.

[2] Flegal KM, et al. "Excess Deaths Associated with Underweight, Overweight, and Obesity." *Journal of the American Medical Association* 2005, vol. 293, pp. 1861-1867.

[3] Centers for Disease Control and Prevention, National Center for Health Statistics, Division of Health Interview Statistics. *Data & Trends, National Diabetes Surveillance System, Prevalence of Diabetes*. Accessed at <http://www.cdc.gov/diabetes/statistics/prev/national/tablepersons.htm> on February 28, 2006.

[4] Hu F, et al. "Diet, Lifestyle, and the Risk of Type 2 Diabetes Mellitus in Women." *The New England Journal of Medicine*, 2001, vol. 345, pp. 790-797.

[5] U.S. Department of Health and Human Services. *The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity 2001*. Rockville, MD: U.S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General, 2001.

healthy range, balance calories from foods and beverages with calories expended."[6] It is total calories that contribute to weight gain – not other nutrients, such as calcium, iron, potassium, and Vitamins A and C. Given the pressing nature of the obesity problem, San Francisco's decision to limit labeling on menu boards to calories is sound public health policy.

8. With regards to menus, San Francisco's menu labeling law requires restaurants to post saturated fat, carbohydrates and sodium, in addition to calories. Saturated fat contributes to heart disease and too much sodium contributes to high blood pressure – both are leading health problems in California. San Francisco's menu labeling law also requires that additional nutrition information such as protein, fiber, and trans fats, be provided on posters inside the restaurant.

Restaurant foods are a significant and growing part of Americans' diets

9. Americans are increasingly relying on restaurants to feed themselves and their families. In 1970, Americans spent just 26% of their food dollars on restaurant meals and other foods prepared outside their homes.[7] Today, we spend almost half (46%) of our food dollars on away-from-home foods.[8] American adults and children consume about one third of their calories from restaurants and other food-service establishments.[9]

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[6] U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2005*. Washington, DC: USDA and HHS, January 2005.

[7] Lin B, Guthrie J, Frazao E. *Away-From-Home Foods Increasingly Important to Quality of American Diet*. Washington, DC: U.S. Department of Agriculture, Economic Research Service, 1999. Agriculture Information Bulletin No. 749.

[8] National Restaurant Association (NRA). "Industry at a Glance." Accessed at <http://www.restaurant.org/research/ind_glance.cfm> on April 12, 2002.

[9] Lin B, Guthrie J, Frazao E. *Away-From-Home Foods Increasingly Important to Quality of American Diet*. Washington, DC: U.S. Department of Agriculture, Economic Research Service, 1999. Agriculture Information Bulletin No. 749.

Restaurant food typically has larger portions and higher caloric content than food consumed at home

10. Americans are eating more calories than two decades ago, a trend which coincides with Americans' increased consumption of restaurant foods. Studies link eating out with higher caloric intakes and higher body weights or fatness.[10,11,12,13,14,15,16]

11. Children eat almost twice as many calories when they eat a meal at a restaurant (770 calories) compared to a meal at home (420 calories).[17] Women who eat out more often (more than 5 times a week) consume about 290 more calories on average each day than women who eat out less often.[18] Furthermore, eating more fast-food meals is linked to eating more calories, more saturated fat, fewer fruits and vegetables, and less milk.[19,20,21,22,23,24]

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[10] Zoumas-Morse C, Rock CL, Sobo EJ, Neuhouser ML. "Children's Patterns of Macronutrient Intake and Associations with Restaurant and Home Eating." *Journal of the American Dietetic Association* 2001, vol. 101, pp. 923-925.

[11] Pereira, MA, et al. "Fast-Food Habits, Weight Gain, and Insulin Resistance (The CARDIA Study): 15-year Prospective Analysis." *Lancet* 2005, vol. 365, pp. 36-42.

[12] Thompson OM, et al. "Food Purchased Away from Home as a Predictor of Change in BMI z-score among Girls." *International Journal of Obesity* 2004, vol. 28, pp. 282-289.

[13] Binkley JK, et al. "The Relation between Dietary Change and Rising U.S. Obesity." *International Journal of Obesity* 2000, vol. 24, pp. 1032-1039.

[14] Jeffery RW, French SA. "Epidemic Obesity in the United States: Are Fast Food and Television Viewing Contributing?" *American Journal of Public Health* 1998, vol. 88, pp. 277-280.

[15] McCrory MA, Fuss PJ, Saltzman E, Roberts SB. "Dietary Determinants of Energy Intake and Weight Regulation in Healthy Adults." *Journal of Nutrition* 2000, vol. 130 (Supplement), pp. 276S-279S.

[16] McCrory MA, Fuss PJ, Hays NP, Vinken AG, Greenberg AS, Roberts SB. "Overeating in America: Associations between Restaurant Food Consumption and Body Fatness in Healthy Adult Men and Women Ages 19 to 80." *Obesity Research* 1999, vol. 7, pp. 564-571.

[17] Zoumas-Morse C, Rock CL, Sobo EJ, Neuhouser ML. "Children's Patterns of Macronutrient Intake and Associations with Restaurant and Home Eating." *Journal of the American Dietetic Association* 2001, vol. 101, pp. 923-925.

[18] Clemens LH, et al. "The Effect of Eating Out on Quality of Diet in Premenopausal Women." *Journal of the American Dietetic Association* 1999, vol. 99, pp. 422-444.

[19] Schmidt M, et al. "Fast-Food Intake and Diet Quality in Black and White Girls." *Archives of Pediatric and Adolescent Medicine* 2004, vol. 159, pp. 626-631

[20] S.A. Bowman and B.T. Vinyard. "Fast-Food Consumers vs. Non-Fast-Food Consumers: A Comparison of Their Energy Intakes, Diet Quality, and Overweight Status." *Journal of the American College of Nutrition* 2004, vol. 23, pp. 163-168.

12. Foods that people eat from restaurants and other food-service establishments are generally higher in calories than home-prepared foods.[25,26,27,28] It is not uncommon for a restaurant entree to provide half of a day's recommended calories.[29] Include an appetizer, beverage or dessert, and it is easy to consume a whole day's calories in a single meal. No one would mistake cheese fries with ranch dressing for a health food, but few would guess that a typical serving uses up one and a half day's worth of calories (3,010 calories). A large milk shake from McDonald's has over 1,000 calories, about a half a day's worth.

13. It is common for restaurants to serve two to three times more than what is considered a standard serving size. A Double Gulp from 7-Eleven contains six servings, meaning it provides six times as many calories as would a standard serving of soft drink. A porterhouse steak from a typical steak house restaurant weighs more than a pound; according to U.S. Department of Agriculture serving sizes, that is enough meat to serve a family of six.

(footnote continued from previous page)

[21] S. Paeratakul, et al. "Fast-Food Consumption among U.S. Adults and Children: Dietary and Nutrient Intake Profile." *Journal of the American Dietetic Association* 2003, vol. 103, pp. 1332-1338.

[22] Jeffery RW, French SA. "Epidemic Obesity in the United States: Are Fast Food and Television Viewing Contributing?" *American Journal of Public Health* 1998, vol. 88, pp. 277-280.

[23] French SA, Story M, Neumark-Sztainer D, Fulkerson JA, Hannan P. "Fast Food Restaurant Use among Adolescents: Associations with Nutrient Intake, Food Choices and Behavioral and Psychosocial Variables." *International Journal of Obesity* 2001, vol. 25, pp. 1823-1833.

[24] McNutt SW, Hu Y, Schreiber GB, Crawford PB, Obarzanek E, Mellin L. "A Longitudinal Study of the Dietary Practices of Black and White Girls 9 and 10 Years Old at Enrollment: The NHLBI Growth and Health Study." *Journal of Adolescent Health* 1997, vol. 20, pp. 27-37.

[25] Lin B, Guthrie J, Frazao E. *Away-From-Home Foods Increasingly Important to Quality of American Diet*. Washington, DC: U.S. Department of Agriculture, Economic Research Service, 1999. Agriculture Information Bulletin No. 749.

[26] Jeffery RW, French SA. "Epidemic Obesity in the United States: Are Fast Food and Television Viewing Contributing?" *American Journal of Public Health* 1998, vol. 88, pp. 277-280.

[27] Ma Y, Bertone ER, Stanek III EJ, Reed GW, Hebert JR, Cohen NL, Merriam PA, Ockene IS. "Association between Eating Patterns and Obesity in a Free-living US Adult Population." *American Journal of Epidemiology* 2003, vol. 158, pp. 85-92.

[28] McCrory MA, Fuss PJ, Hays NP, Vinken AG, Greenberg AS, Roberts SB. "Overeating in America: Associations between Restaurant Food Consumption and Body Fatness in Healthy Adult Men and Women Ages 19 to 80." *Obesity Research* 1999, vol. 7, pp. 564-571.

[29] Jacobson MF, Hurley JG. *Restaurant Confidential*. New York, NY: Workman Publishing, 2002.

Without nutrition information, consumers cannot accurately assess the calorie content in restaurant foods

14. Without nutrition information, consumers substantially underestimate the levels of calories found in many less healthful menu items.[30,31]

15. A representative, state-wide telephone poll in California found that few Californians are able to identify from among typical fast-food and other chain restaurant menu items those with the fewest/most calories, salt, or fat.[32] Not a single respondent answered all four questions correctly. Less than 1% answered three of four questions correctly, only 5% answered two of the four questions correctly, and nearly 68% were unable to answer even one question correctly. Scores were equally poor regardless of education or income levels. Analogous results were found from a similar state-wide poll in Connecticut.[33]

16. One study demonstrated that even trained nutrition professionals cannot accurately estimate the calorie content of typical restaurant meals.[34] They consistently underestimated the calories, and their estimations were off by large amounts – by 200 to 600 calories. For example, when shown a typical dinner-house hamburger and onion rings, the dietitians, on average, estimated that it had 865 calories, when it actually contained 1,550 calories.

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[30] Burton S, Creyer EH, Kees J, Huggins K. "Attacking the Obesity Epidemic: An Examination of the Potential Health Benefits of Nutrition Information Provision in Restaurants." *American Journal of Public Health,* 2006, forthcoming.

[31] Johnson WG, Corrigan SA, Schlundt DG, Dubbert PM. "Dietary Restraint and Eating Behavior in the Natural Environment." *Addictive Behaviors* 1990, vol. 15, pp. 285-290.

[32] California Center for Public Health Advocacy. Statewide poll on March 20-31, 2007 conducted by Field Research Corporation of 523 registered California voters. Accessed at www.publichealthadvocacy.org/menulabelingpoll.html on June 20, 2007.

[33] End Hunger Connecticut. State-wide poll conducted between April 17 and April 23, 2007 by the Center for Survey Research and Analysis at the University of Connecticut of 501 Connecticut residents. Accessed at www.endhungerct.org/PDF/pollresults.pdf on June 20, 2007.

[34] Backstrand J, Wootan MG, Young LR, Hurley J. *Fat Chance*. Washington, DC: Center for Science in the Public Interest, 1997.

When provided, many consumers use nutrition information to make healthier choices

17. Since 1994, the Nutrition Labeling and Education Act (NLEA) has required food manufacturers to provide nutrition information on nearly all packaged foods. Three-quarters of adults report using packaged food labels.[35] Using nutrition labels is associated with eating more healthful diets,[36,37,38] and almost half of consumers report that the nutrition information on food labels has caused them to change their minds about buying a food product.[39] Studies also show that the provision of nutrition information at restaurants can help people make lower-calorie choices.

Menu labeling is not counter productive as claimed by CRA

18. People are accustomed to using nutrition labeling on packaged foods and want it on menus. In addition, FDA consumer research finds that people primarily use food labels on packaged foods to make side-by-side comparisons of items within similar product categories (for example, to compare the calories in two different brands of ice cream). Such comparisons may be easier to make via menu labeling than using packaged food labeling in grocery stores, because there are fewer items on menus (dozens to one or two hundred) than in grocery stores (tens of thousands) and items are listed together in a common place on menus rather than scattered over a large area in the grocery store. With menu labeling, restaurant customers will be able to determine that:

- Two jelly-filled doughnuts at Dunkin' Donuts have fewer calories than a sesame bagel with cream cheese;

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[35] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics. *Healthy People 2000 Final Review*. Hyattsville, MD: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, 2001. DHHS Publication No. 01-0256.

[36] Kim SY, Nayga RM, Capps O. "The Effect of Food Label Use on Nutrient Intakes: An Endogenous Switching Regression Analysis." *Journal of Agricultural and Resource Economics* 2000, vol. 25, pp. 215-231.

[37] Kreuter MW, Brennan LK, Scharff DP, Lukwago SN. "Do Nutrition Label Readers Eat Healthier Diets? Behavioral Correlates of Adults' Use of Food Labels." *American Journal of Preventive Medicine* 1997, vol. 13, pp. 277-283.

[38] Neuhouser ML, Kristal AR, Patterson RE. "Use of Food Nutrition Labels Is Associated with Fat Intake." *Journal of the American Dietetic Association* 1999, vol. 99, pp. 45-50, 53.

[39] Levy AS, Derby BM. *The Impact of the NLEA on Consumers: Recent Findings from FDA's Food Label and Nutrition Tracking System*. Washington, DC: Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1996.

- A Frappuccino can have 200 more calories than the same sized cappuccino; or
- A whole fried onion appetizer has 1,300 more calories than the fried mozzarella sticks.

19. In addition, San Francisco's ordinance requires restaurants to put calorie numbers in context on their menus, by providing a statement on the menu as to the recommended intake of sodium and saturated fat for a 2,000 calorie per day diet. Restaurants could also choose to put a similar statement on menu boards. Nothing in the ordinance prevents them posting additional statements on their menus and menu boards, such as, "A 2,000 calorie daily diet is used as the basis for general nutrition advice; however individual calorie needs may vary."

20. Exhibit A contains several recent examples of real menus and menu boards with calorie information posted from New York City chain restaurants. These menus demonstrate that providing nutrition information on the menu can be implemented to provide clear, easy-to-understand information to allow people to make comparisons between different menu items and choose lower calorie options if they want to.

Product reformulation is a key benefit of nutrition labeling

21. A key benefit of mandatory nutrition labeling on packaged foods has been the reformulation of existing products and the introduction of new nutritionally improved products.[40] In the first four years after implementation of mandatory nutrition labeling of packaged foods, the number of available fat-modified cheese products tripled and the market share for fat-modified cookies increased from 0% of the market to 15%.[41] In a similar fashion, nutrition labeling on menus and menu boards is likely to spur nutritional improvements in restaurant foods.

Providing nutrition information on menus is likely to provide significant public health benefits

22. Americans consume an increasing number of calories away from home, restaurant foods are higher in calories than home-prepared meals, and without nutrition labeling, it is extremely

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[40] Silverglade BA. "Food Labeling: Rules You Can Live By." *Legal Times,* July 17, 1995, pp. 21-24.

[41] Levy AS, Derby BM. *The Impact of the NLEA on Consumers: Recent Findings from FDA's Food Label and Nutrition Tracking System.* Washington, DC: Center for Food Safety and Applied Nutrition, Food and Drug Administration, 1996.

difficult to accurately assess the number of calories in a restaurant meal. Therefore, it is reasonable to conclude that requiring menu labeling is likely to yield important health and economic benefits.

23. Federal agencies have estimated significant economic and health benefits from food labeling. The FDA estimated that requiring trans fat to be listed on packaged food labels would save 2,100 to 5,600 lives a year and $3 billion to $8 billion a year.[42] The USDA estimated the economic benefits of extending nutrition labeling to fresh meat and poultry to be $62 million to $125 million per year.[43]

24. A survey of 7,318 customers from 275 fast-food restaurants found that the average caloric content of fast-food restaurant lunches was 827 calories; 34% of purchased lunches contained over 1,000 calories.[44] Subway customers who saw nutrition information in the restaurant purchased meals with an average of 52 fewer calories than people who did not see the information. A third of the Subway customers (37%) reported that the nutrition information affected their purchases; those customers purchased meals with 99 fewer calories than those who saw the information and reported it had no effect.

25. Using conservative estimates, the New York City Department of Health and Mental Hygiene estimated that, over the next five years, its menu labeling policy for fast-food and other chain restaurants would lead to at least 150,000 fewer New Yorkers being obese, resulting in at least 30,000 fewer cases of diabetes.[45]

26. The Los Angeles County Public Health Department estimated that menu labeling could prevent 39% of the 6.75 million pounds gained annually in Los Angeles County for people 5

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[42] Food and Drug Administration, U.S. Department of Health and Human Services. *Federal Register* 1999, vol. 64, pp. 62772-62774.

[43] Crutchfield S, Kuchler F, Variyam JN. "The Economic Benefits of Nutrition Labeling: A Case Study for Fresh Meat and Poultry Products." *Journal of Consumer Policy* 2001, vol. 24, 185-207.

[44] Bassett MT, Dumanovsky T, Huang C, Silver LD, Young C, Nonas C, Matte TD, Chideya S, Frieden TR. "Purchasing Behavior and Calorie Information at Fast-Food Chains in New York City, 2007. *American Journal of Public Health* 2008;98.

[45] New York City Department of Health and Mental Hygiene (NYCDHMH). *Notice of Adoption of Resolution to Repeal and Reenact §81.50 of the New York City Health Code*. New York City: NYCDHMH, January 2008.

years and older.[46] The impact would be greater if larger proportions of people ordered fewer calories per restaurant meal.

27. The total U.S. healthcare costs due to obesity are $94 billion a year.[47] Half that cost ($47 billion) is paid through Medicare and Medicaid. According to the U.S. Department of Agriculture, healthier diets could prevent at least $71 billion per year in medical costs, lost productivity, and lost lives.[48]

Experts agree that restaurants should provide nutrition information at the point of ordering

28. Menu labeling has been recognized by many prominent health experts as an important strategy for addressing nutrition and obesity. The National Academies' Institute of Medicine recommends that restaurant chains "provide calorie content and other key nutrition information on menus and packaging that is prominently visible at point of choice and use."[49] The U.S. Surgeon General has called for "increasing availability of nutrition information for foods eaten and prepared away from home."[50] The Food and Drug Administration through the Keystone Forum on Away-From-Home Foods recommended that restaurants "provide consumers with calorie information in a standard format that is easily accessible and easy to use."[51]

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[46] Simon P, Jarosz CJ, Kuo T, Fielding JE. *Menu Labeling as a Potential Strategy for Combating the Obesity Epidemic: A Health Impact Assessment*. Los Angeles, CA: County of Los Angeles Public Health, Division of Chronic Disease and Injury Prevention, May 2008.

[47] Finkelstein EA, Fiebelkorn IC, Wang G. "State-level Estimates of Annual Medical Expenditures Attributable to Obesity." *Obesity Research* 2004, vol. 12, pp. 18-24.

[48] Frazao E. "High Costs of Poor Eating Patterns in the United States." In *America's Eating Habits: Changes and Consequences*. Edited by Elizabeth Frazao. Washington, DC: Economic Research Service, U.S. Department of Agriculture, 1999. Agriculture Information Bulletin No. 750, pp. 5-32.

[49] Koplan JP, Liverman CT, Kraak VA, Editors, Committee on Prevention of Obesity in Children and Youth, Food and Nutrition Board, Institute of Medicine. "Preventing Childhood Obesity: Health in the Balance." Washington, DC: National Academies Press, 2005.

[50] U.S. Department of Health and Human Services. *The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity*. Rockville, MD: U.S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General, 2001.

[51] Food and Drug Administration. *The Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*. Rockville, Maryland: Food and Drug Administration, May 2006, pp. 76-79.

There is overwhelming public support for menu labeling

29. Public support for nutrition labeling on menus and menu boards is strong. According to an industry-backed nationally representative poll, 83% of Americans believe restaurants should make nutrition information available for all menu items.[52] When asked specifically about requiring chain restaurants to provide nutrition information on menus, a state-wide poll in California shows that 84% of people support menu labeling.[53]

Menu labeling is easier to find and use at the point of ordering than other approaches

30. The Keystone Forum on Away-from-Home Foods, funded and convened by the U.S. Food and Drug Administration, concluded that restaurants "should provide consumers with calorie information in a standard format that is easily accessible and easy to use."[54] "Information should be provided in a manner that is easy for consumers to see and use as part of their purchasing and eating decisions." As a member of the Keystone Forum, I know that there were several key points to that recommendation, including that calorie information be 1) provided in a standardized format, 2) easy to find, and 3) easy to use at the point where people are making purchasing and eating decisions.

31. Currently those restaurants that do provide nutrition information do so in a variety of formats within their own chain, and there are considerable differences in formats used between chains. As a result, customers who are interested in nutrition information do not know where to look to find it.

32. At least half of chain restaurants provide no nutrition information anywhere about the food they sell.[55] The second most common approach is to provide nutrition information on a website

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[52] ARAMARK Corp. 2005, nationwide online survey of 5,297 adults. As cited by Nanci Hellmich. "Diners Want More Info and Smaller Entrees." October 19, 2005. Accessed at http://www.usatoday.com/news/health/2005-10-19-diners-less-food_x.htm.

[53] California Center for Public Health Advocacy. Statewide poll on March 20-31, 2007 conducted by Field Research Corporation of 523 registered California voters. Accessed at www.publichealthadvocacy.org/menulabelingpoll.html on June 20, 2007.

[54] Food and Drug Administration. The Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity. Rockville, Maryland: FDA, May 2006.

[55] Wootan, MG, Osborn, M. "Availability of Nutrition Information from Chain Restaurants in the U.S." *American Journal of Preventive Medicine* 2006, vol. 30, pp. 266-268.

or other format which is not available in the restaurant. On-premise nutrition information is provided through posters, pamphlets, handouts, reference book, kiosks, tray liners, table tents, counter signs, napkins, fast-food packages, receipts, or other means. The Keystone Forum's report analyzed the various options available to restaurants for providing nutrition information to its customers. Although websites are versatile, can be comprehensive, and interactive, they are only accessible to customers with a computer and Internet access and require considerable forethought prior to going to a restaurant. If people had time to go home, log on to the Internet, and study a website, they might instead just choose to cook their meal at home. Convenience is a key reason people eat out. In addition, because websites organize information differently, nutrition information can be hard to find and use in the absence of standardization.

33. Providing calories on menus, menu boards, and food tags, as San Francisco has required, would cut through the current chaos in the market place by providing a standard place where consumers can find calorie information in restaurants that must comply with San Francisco's menu labeling rule.

34. Requiring servers to verbally offer nutrition information upon request, although personal and available at the point of purchase, would demand additional training of staff, and vary in its accuracy and helpfulness depending on the server. It also would make it difficult to compare items on the menu.

35. Putting nutrition information on tray liners and fast-food packaging does not present the information to the customer until after the food has been ordered and served, regardless of how thorough and detailed that information is. People need nutrition information before they order for it to be helpful in their decision making.

36. Although table mats, table tents, pamphlets, and signs on stanchions could be made available at point of purchase, they are easily misplaced or moved to less visible locations. CSPI conducted a study of the availability of nutrition information at McDonald's restaurants in

Washington, D.C. in 2005.[56] We found that even at the largest chain restaurant in the country, nutrition information at the point of decision-making is often difficult to find or completely absent. 40% of the McDonald's outlets did not provide in-store nutrition information for a majority of their menu items. In 62% of the restaurants, it was necessary to ask two or more employees in order to obtain a copy of that information.

37. Some restaurants provide posters, signs, stanchions, and electronic kiosks for customers to use prior to ordering, however these approaches to information-sharing require additional time and effort from customers to track down and read, and do not allow people to consider both calorie information and price together. When price and nutrition information are not in the same place, consumers cannot make tradeoffs between nutrition and cost. This approach also puts extra burden on people who want to make informed choices; they become the exception rather than the norm (i.e., it does not make the healthier choice the easy choice). Yet polls show that the overwhelming majority of people want restaurants to provide nutrition information.

38. The alternative approaches to providing nutrition information urged by CRA, including kiosks, on-package labeling, and having servers provide nutrition information verbally, do not present the information in a way that allows people to compare nutrition information of different menu items. That is the key way people use nutrition labeling on packaged foods.

Restaurants contend that menus and menu boards are the "most important tool" for communicating with customers

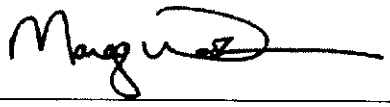
39. The restaurant industry seems agreeable to the idea of providing calorie information in almost any format except the one way that will be effective – on the menu. The California Restaurant Association contends that some of its members already provide nutrition information "in brochures available at the restaurants, on posters, on packaging, on tray liners, and on websites." Pl. Mem. at 2. At the same time, CRA also states that menus and menu boards are the "most important communication tool" for conveying information to customers. *Id.* at 27.

[56] Wootan MG, Osborne M, Malloy C. "Availability of Point of Purchase Nutrition Information at a Fast Food Restaurant." *Preventive Medicine* 2006, vol. 43, pp. 458-459.

40. San Francisco rightly requires that nutrition information be provided where customers get other information about what to order, including the menu options, product descriptions, and price. Calorie information is too important to San Franciscans' health to relegate to hard-to-find pamphlets or kiosks, or tray liners or packaging, which people do not receive until after they order their food. Calorie information should be provided in the most user-friendly manner, which is on the menu, menu board, or food tag. For over thirty years, we have known that signs indicating the calorie content of available foods in a cafeteria setting can significantly decrease the number of calories that people purchase.[57] More recently, studies have specifically linked more healthful choices with calories placed directly on the menu.[5859]

I declare under penalty of perjury that the foregoing is true and correct.

Executed July 31, 2008



Margo G. Wootan, D.Sc.

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EXHIBIT A

International House of Pancakes (IHOP) Restaurant Menu in New York City

The Big Steak Omelette

Create Your Own Omelette

Begin with our hearty omelette and your choice of cheese 6.99 (920 Cal.)

Then add your favorite ingredients 1.59 each

- Ham (35 Cal.)
- Pork Sausage (170 Cal.)
- Mushrooms (15 Cal.)
- Green Peppers and Onions (10 Cal.)
- Bacon (130 Cal.)
- Extra Cheese (190-230 Cal.)
- Tomatoes (20 Cal.)
- Spinach (10 Cal.)
- Salsa (20 Cal.)

Omelettes

Our hearty omelettes are made with a splash of our famous buttermilk and wheat pancake batter for extra fluffiness and are served with three buttermilk pancakes.

The Big Steak Omelette
Tender strips of steak, hash browns, green peppers, onions, mushrooms, tomatoes and Cheddar cheese. Served with salsa 10.59
(1490 Cal.)

Colorado Omelette
A meat lover's delight. Bacon, pork sausage, shredded beef, ham, onions, green peppers and Cheddar cheese. Served with salsa 10.59
(1470 Cal.)

Country Omelette
A delicious blend of ham, cheese, onions and hash browns. Topped with sour cream 9.99
(1380 Cal.)

Garden Omelette
An abundance of fresh green peppers, mushrooms, onions, tomatoes and cheese 10.59
(1150 Cal.)

Chicken Fajita Omelette
Seasoned chicken, onions, green peppers, tomatoes, mushrooms, salsa and a blend of cheeses. Topped with sour cream 10.59
(1360 Cal.)

Corned Beef Hash & Cheese Omelette
Home-style corned beef hash and plenty of cheese 9.99
(1170 Cal.)

Big Bacon Omelette
Loaded with six strips of chopped hickory-smoked bacon, onions, diced tomatoes, Parmesan and Swiss cheeses. Topped with sour cream 9.99
(1430 Cal.)

Supreme Ham & Three Cheese Omelette
Our hearty omelette loaded with diced ham, Cheddar, Jack and Swiss 9.99
(1280 Cal.)

Spinach & Mushroom Omelette
Fresh spinach, mushrooms, onions and Swiss cheese rolled in a fluffy omelette. Topped with rich hollandaise and diced tomatoes 9.99
(1210 Cal.)

Cosi Menu Board in New York City

Starbucks Menu Board and Food Tags in New York City